No. 17-1104

IN THE

Supreme Court of the United States

AIR AND LIQUID SYSTEMS CORP., CBS CORPORATION, AND FOSTER WHEELER LLC,
Petitioners,

v.

ROBERTA G. DEVRIES, Administratrix of the Estate of John B. DeVries, Deceased, and Widow in her own right,
Respondent.

INGERSOLL RAND COMPANY,
Petitioner,

v.

SHIRLEY MCAFEE, Executrix of the Estate of Kenneth McAfee, and Widow in her own right,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Reply Brief for the Petitioners

Benjamin M. Flowers
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215

Shay Dvoretzky
Counsel of Record
Jeffrey R. Johnson
Vivek Suri
JONES DAY
51 Louisiana Ave NW,
Washington, DC 20001
Tel.: (202) 879-3939
sdvoretzky@jonesday.com

Counsel for Petitioner CBS Corporation
(Additional counsel listed on inside cover)

Christopher G. Conley
EVERT WEATHERSBY HOUFF
200 Cleveland Road,
Suite 6
Bogart, GA 30622

Counsel for Petitioner CBS Corporation

Christopher J. Keale
Afigo I. Okpewho-Fadahunsi
TANENBAUM KEALE LLP
1085 Raymond Blvd.
One Newark Center
16th Floor
Newark, NJ 07102

Counsel for Petitioner Foster Wheeler LLC

Brady L. Green
WILBRAHAM, LAWLER & BUBA
1818 Market Street,
Suite 3100
Philadelphia, PA 19103

Counsel for Petitioner Air & Liquid Systems Corp. (successor by merger to Buffalo Pumps, Inc.)

John J. Hare
MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN
2000 Market Street,
Suite 2300
Philadelphia, PA 19103

Counsel for Petitioner Ingersoll-Rand Company

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INTRODUCTION

The Third Circuit held that a manufacturer can be liable for an injury caused by a later-added, third-party product, if it is foreseeable that it could be used with the defendant's own product. That is wrong as a matter of the common law of torts; products-liability defendants are liable only for injuries caused by products that they made, sold, or distributed. It is also wrong as a matter of common sense; if it were right, cutlers would have to warn about the risks of undercooked meat, ash-tray manufacturers about the dangers of smoking, drywall manufacturers about the dangers of paint or wallpaper, and so on. The common-law tort rule is simple and administrable, and it promotes the purposes of admiralty law. This Court should therefore recognize it as a matter of general maritime law.

The plaintiffs never respond to this. Instead, they raise a slew of new arguments, all of which rest on legal principles that are non-existent, irrelevant, or both. The plaintiffs also answer a series of arguments that no one has ever made, while offering no reply to the many examples that the petitioners gave to show the absurdity and unworkability of the Third Circuit's test. Indeed, the plaintiffs now abandon the Third Circuit's test, arguing instead that manufacturers may be liable for later-added parts and materials "inevitably" used with their products.

This inevitability test fares no better than the Third Circuit's foreseeability test. It is just as doctrinally unsupported, and leads to results that are just as untenable. For example, car owners "inevitably" replace antifreeze, but no one thinks—and no court has ever held—that car manufacturers must

warn users about the dangers to pets and children of storing antifreeze improperly. What the plaintiffs really seek is an asbestos-specific exception to black-letter tort law. But there is no principled basis for an asbestos-specific test, so the line would not hold: courts would inevitably extend the inevitability test beyond asbestos cases to products-liability cases generally.

The Court should adhere to longstanding tort doctrine, maritime-law principles, and common sense. It should reverse the Third Circuit.

ARGUMENT

I. THE PETITIONERS ARE NOT LIABLE UNDER TORT-LAW DOCTRINE.

There is no general duty to protect the public from third parties, no matter how foreseeable third-party conduct might be. Restatement (Second) of Torts §§ 314–15. And tort law imposes liability only on those who *directly* cause an injury; indirect or attenuated causal connections are not enough. *See* F. Bacon, *The Maxims of the Law* § 1 (1629), *in* 4 The Works of Francis Bacon (printed for J. Johnson, 1803). So products-liability defendants are not liable for injuries caused by products made, sold, and distributed by others—including parts and components foreseeably used with their own products. *See* Petrs. Br. 19, 22–23 (collecting cases).

The plaintiffs never confront the doctrinal and common-sense points undergirding the petitioners' argument. They instead appeal to irrelevant tort-law principles, to an imagined "overwhelming majority" of state-law cases supporting their rule, and to public policy. Their arguments fail.

A. The plaintiffs' various appeals to tort-law doctrine fail.

Most of the plaintiffs' counterarguments rest on tort-law principles that are either non-existent or consistent with the petitioners' position.

Foreseeability. According to the plaintiffs, the "principle that duty arises from ... foreseeability is hornbook law." Resps. Br. 47. Based on this "principle," they argue that the petitioners had a duty to warn about the dangers of third-party asbestos "foreseeably" used with their equipment.

The hornbooks say just the opposite: tort-law duties *do not* arise from "foreseeability alone." *See O'Neil v. Crane Co.*, 266 P.3d 987, 1006 (Cal. 2012). Of course, "foreseeability is an important *limiting* factor in tort litigation," Resps. Br. 3, because defendants are not generally liable for unforeseeable events. *See Nielsen v. Henry H. Stevens, Inc.*, 118 N.W.2d 397, 399 (Mich. 1962). But foreseeability alone does not *create* a duty; something more is needed.

Defining "product." In the products-liability context, that "something more" includes proof that the defendant made, sold, or distributed the injurious good. *See* Petrs. Br. 19, 22–23. This rule defeats the plaintiffs' claims, because the petitioners did not make, sell, or distribute the asbestos-containing materials and parts that allegedly injured John DeVries and Kenneth McAfee.

The plaintiffs respond that the materials and parts added to the petitioners' equipment post-sale—often decades post-sale—are *the same* "products" as the equipment itself. This argument, never raised in the

Third Circuit or in the plaintiffs' Brief in Opposition, is wrong. In products-liability law, the relevant "products" are the defendant's goods, in the form they were in when they left its hands. *See Cipollone v. Yale Indus. Prods., Inc.*, 202 F.3d 376, 379 (1st Cir. 2000). Thus, later-added parts and materials are distinct products for which the original manufacturer has no duty to warn. *See, e.g., Baughman v. Gen. Motors Corp.*, 780 F.2d 1131, 1133 (4th Cir. 1986); *Mitchell v. Sky Climbers, Inc.*, 487 N.E.2d 1374, 1376 (Mass. 1986); *Toth v. Econ. Forms Corp.*, 571 A.2d 420, 423 (Pa. Super. Ct. 1990); *O'Neil*, 266 P.3d at 991.

Consider a manufacturer that makes and sells passenger jets that contain everything but the seats, the sale of which it leaves to third parties "in the business of airline seating." *In re Deep Vein Thrombosis*, 356 F. Supp. 2d 1055, 1058 (N.D. Cal. 2005). Even though the jets are useless for their intended purpose without seats, the manufacturer's "products" are not the completed jets; they are the *almost*-complete jets, lacking seats. *Id.* at 1062. Thus, the manufacturer is not liable for any defects in the seats themselves, and has no duty to warn about any risk of blood clots that they pose. *Id.* at 1068–69.

The same logic applies to replacement parts. Consider a toy car distributed with one AA battery. The toymaker could be liable for an injury caused by the battery that *it* distributed. But no court would hold the toymaker liable if *another* manufacturer's identical replacement battery exploded, or omitted a warning.

Of course, manufacturers are still liable if some defect in *their own product* causes an injury when

used with a later-added part. Thus, the maker of a table saw may be liable if its own defective design causes injury—for example, when the lack of a "safety devic[e]" on the saw causes the user to slip and cut himself—even if the saw blade was added later. Resps. Br. 31. But it is not liable for a defect in the blade itself. A carmaker may be liable for a faulty gas tank; but it has no duty to warn about all the foreseeable dangers of later-added gas. *See* Amicus Br. of Multiple Veterans Organizations 18. And a wheel manufacturer may be liable if it fails to warn that the wheel may explode when used with a particular type of tire; but the maker of *a tire* specifically designed for that wheel has no duty to warn about *the wheel's* risks. *Reynolds v. Bridgestone/Firestone, Inc.*, 989 F.2d 465, 471–72 (11th Cir. 1993) (cited at Resps. Br. 49); *accord Huynh v. Ingersoll-Rand Co.*, 20 Cal. Rptr. 2d 296, 300–01 (Cal. Ct. App. 1993) (manufacturer had duty to warn that its grinder was incompatible with certain discs and could cause them to explode) (cited at Resps. Br. 48). In these cases, the manufacturer is liable for defects that shipped with its product, not defects introduced or reintroduced later.

The plaintiffs cannot evade this principle by redefining the equipment the petitioners made as "integrated product[s]" that include post-sale additions. Resps. Br. 29. By "integrated product," the plaintiffs apparently mean a product with multiple components. *See Cipollone*, 202 F.3d at 379. Manufacturers are indeed responsible for third-party components included or sold with their equipment. This is sometimes called "assembler's liability." *See, e.g.*, *Braaten v. Saberhagen Holdings*, 198 P.3d 493, 498

n.7 (Wash. 2008) (en banc). But manufacturers have no duties as to third-party parts and materials added to their integrated products post-sale. *See, e.g.*, *Baughman*, 780 F.2d at 1132–33; *O'Neil*, 266 P.3d at 991.

Moreover, the integrated-product argument is particularly strained in the maritime context. The many parts of a shipboard system work together. Thus, the pieces of equipment the petitioners sold are more naturally thought of as components of the systems into which they were integrated. Unlike a typical integrated product (say, a car), the petitioners' equipment served no purpose until it was installed in shipboard systems. So the equipment was more like a car chassis (a component made up of many other components to which even more components will be added) than a completed car. *Contra* Resps. Br. 52–53. If someone made and sold a chassis by itself, no court would say that later-added doors and axles connected to the chassis were part of that person's "product." *See Baughman*, 780 F.2d at 1132–33. It follows that replacement parts and later-added insulation are not the same "products" as the equipment to which they are attached.

The plaintiffs try to cabin the breadth of their metaphysical inquiry into an "integrated" product's true nature by suggesting that a later-added part or material counts as part of the same product if its use is "inevitable." Resps. Br. 37. This is not the Third Circuit's test. It held that manufacturers may be liable if they knew or should have known that their products would "be used with an asbestos-containing part"—that is, the use of asbestos must have been foreseeable, not necessarily inevitable. Pet. App.

15a. The court's (non-exhaustive) examples prove as much; it said manufacturers could be liable if their "product was originally equipped with an asbestos containing part that could reasonably be expected to be replaced." *Id.* ***Expectation*** of replacement with an asbestos-containing part is not the same as ***inevitable*** replacement.

Regardless, the plaintiffs' revamped test is just as unworkable. They insist that it involves two "simple" steps: (1) "did the manufacturer have actual or constructive knowledge that asbestos is hazardous"; and (2) should it have known "that its product would be used with asbestos-containing parts based on its own affirmative conduct?" Resps. Br. 38. But restating the test, adding (another) unspecified concept called "affirmative conduct," and labeling the test "simple" does not make it so.

The petitioners discussed at length the problems with a foreseeability-based test, even one that purports to focus on the defendant's "affirmative conduct," like making equipment that "requires" replacement parts or "direct[ing]" the parts' use. Petrs. Br. 44–46, 4[illegible]-51. For example, it is impossible to define how much less efficient or more expensive a product must be ***without*** some component before that component is "required." The plaintiffs note there were no "acceptable" substitutes for asbestos when the petitioners supplied their equipment. Resps. Br. 12–13. But "acceptable" is just as uncertain as "required." More importantly, that case-specific response does nothing to resolve the rule's ambiguity in the vast majority of cases—including products-liability cases unrelated to asbestos—to which any principled rule must apply. It is also unclear what it

means for a manufacturer to "direct" the use of a later-added component. Does a recommendation suffice, or must the component be in some sense "required"? If the former, the test sweeps in too much. If the latter, it is has the same problems as the "required" test. And does it matter whether asbestos was "required" by the Navy? By technical necessity? By commercial realities? The plaintiffs clarify none of this.

Once again, the maritime context complicates things even more. Any company that made propellers for Navy ships in the 1950s would have known that the propeller would be powered by steam, that this steam would be generated by a system containing thousands of other parts, and that many of these parts would be insulated with or contain asbestos. The propeller would have accomplished nothing without the steam, and it therefore, in some sense, "required" all the other parts that made up the steam-generation system. Did the propeller maker have a duty to warn about the dangers of asbestos on the boilers, the piping, and all the other parts? Surely not, but under the plaintiffs' test, the answer seems to be "yes."

The plaintiffs' own brief confirms the slipperiness of the concepts on which they rely. They repeatedly state that the petitioners' equipment contained asbestos "by petitioners' design," and that the petitioners "specified" and "dictat[ed]" the use of asbestos. Resps. Br. 9–14. But as to design, the plaintiffs' own sources show that the Navy "work[ed] closely" with manufacturers to arrive at a "design that" met the Navy's "military requirements." JA 27 (cited at Resps. Br. 11). Given the military's heavy involve-

ment, it is difficult to understand what "by petitioners' design" even means. And documents that the plaintiffs describe as "specifying" or "dictating" the use of asbestos are merely descriptive; they show where the originally supplied asbestos was, and where the Navy would attach asbestos later, but they did not "require" asbestos in the sense of forcing its use. *See, e.g.*, CA3-JA 374–404 (cited at Resps. Br. 13). Indeed, it is undisputed that the petitioners *could not* force the Navy to do anything with their equipment, and that the Navy uses the same equipment without asbestos today. Thus, references to what was "required" or "specified" or "directed" show only that the use of asbestos was foreseeable. The plaintiffs' attempt to redefine the "product" therefore collapses into the pure foreseeability approach they try to avoid.

Product Manuals. The plaintiffs suggest at various points that the petitioners are liable for failing to warn about the risks of asbestos because their decades-old "maintenance manuals directed sailors to replace the gaskets and/or packing" with asbestos replacement parts. Resps. Br. 8; *see id.* at 14. The plaintiffs' two sources do not support this factual claim. One says that the manuals advised when to perform maintenance, but nowhere directs using asbestos. Resp.App. 154a–55a. The second says that sailors used asbestos to seal leaks, but never mentions manuals. JA 304–08.

In any event, the plaintiffs' argument fails even if they have the facts right. Put aside the ambiguity of what it would mean for a manufacturer to "specify" something in a Navy-approved specification relating to naval equipment. The only relevance of "specify-

ing" the use of a particular product is that it makes the product's use foreseeable. And products-liability defendants are not liable for failing to warn about the danger of products foreseeably used with their own—even complementary third-party products that they recommend. Thus, the maker of a dialysis machine that recommends using formaldehyde as a cleaner has no duty to warn about the chemical's risks. *Brown v. Drake-Willock Int'l, Ltd.*, 530 N.W.2d 510, 514–15 (Mich. Ct. App. 1995). If products-liability law *permitted* such liability, cases outside the asbestos context would say so. But neither the plaintiffs nor their amici have identified a single such case, and the petitioners are not aware of any.

Negligence versus Strict Liability. The plaintiffs stress that they are seeking relief in negligence rather than strict liability. Resps. Br. 2–3, 39–40. That distinction is irrelevant. First, courts generally analyze failure-to-warn claims the same way whether they arise in negligence or strict liability. *See* L. Frumer & M. Friedman, 2 Products Liability § 12.02 (Matthew Bender, Rev. Ed. 2018). The plaintiffs' own authority says so. *In re New York City Asbestos Litig. ("Dummitt")*, 59 N.E.3d 458, 469 (N.Y. 2016). To the extent there is a difference, negligent failure-to-warn claims are *harder* to prove, because they require proof as to state of mind; the whole point of strict liability is to remove that element, making it easier for plaintiffs to recover. *See* 2 Products Liability § 12.02. Finally, the rule limiting liability to those inside a product's chain of distribution applies in strict liability and negligence alike: defendants have no duties as to, and do not proximately cause injuries that re-

sult from, third-party products. *See O'Neil*, 266 P.3d at 996, 1007.

Superseding cause. "The doctrine of superseding cause" applies "where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable." *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837 (1996). The plaintiffs accuse petitioners of making a "thinly veiled" argument for extending the superseding-cause doctrine so that it applies even to *foreseeable* intervening acts. Resps. Br. 35.

Not so. The superseding cause doctrine applies only if: (1) the defendant owed a duty to the plaintiff; and (2) the defendant's breach of that duty caused the plaintiff's injury. *See Sofec*, 517 U.S. at 837–39. If both conditions are met, then the defendant may still escape liability if the injury is more directly attributable to some unforeseeable intervening action. Neither condition is satisfied here, however, because the petitioners had no duty to warn about third-party asbestos, and so no breach of that duty on their part could have caused the decedents' injuries. Thus, the question whether some superseding act freed them of responsibility never arises; they were never responsible in the first place. To be sure, the many independent acts between the petitioners' conduct and the plaintiffs' injuries illustrate why the plaintiffs' rule would make bad policy. *Infra* 14–17. But the legal rule does not turn on them.

Happenstance. Finally, the plaintiffs intimate that the petitioners' argument makes liability rest on happenstance. Why, they ask, should a manufacturer that supplies original and replacement gaskets es-

cape liability simply because it did not make the *particular* gasket that caused the injury? Resps. Br. 31. The answer is that "negligence in the air" does not justify liability. *Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 99 (N.Y. 1928). Negligent actions give rise to liability *only if* they breach a duty owed to the plaintiff in a way that proximately causes injury. *Id.* So refusing to impose liability on the supplier of a gasket that causes no injury is no different than refusing to hold liable the reckless driver who makes it home safely.

B. There is no "overwhelming" support for the plaintiffs' position in state law.

The plaintiffs largely ignore the generally applicable tort-law principles on which the petitioners' argument rests. They instead home in on the relatively few state-law cases specifically addressing whether product manufacturers can be held liable for later-added *asbestos*. They say an "overwhelming majority" of these cases support their rule in the asbestos context specifically. Resps. Br. 41. That would be irrelevant if it were true, and it is false.

The many cases addressing foundational tort-law principles deserve far more weight than the few cases addressing the existence of an asbestos-specific exception. Of the many tens of thousands of asbestos cases filed over the years, only a tiny percentage address whether manufacturers are liable for later-added asbestos. Almost all of these cases were decided in recent years, because asbestos litigators began targeting such manufacturers only when companies in the asbestos's chain of distribution went bankrupt. *See* Amicus Br. of Coalition for Litigation Justice, Inc., et al., 5–6. The small number of these cases

suggests that the "overwhelming majority" is really a minority of courts deviating from traditional principles.

Regardless, there is no "overwhelming majority." Resps. Br. 41. The plaintiffs identify only two high-court decisions embracing their rule. *See May v. Air & Liquid Sys. Corp.*, 129 A.3d 984, 1000 (Md. 2015); *Dummitt*, 59 N.E.3d at 471. They cite one other state supreme court decision, but it addresses a distinct issue and in dicta embraces *the petitioners'* rule. *Macias v. Saberhagen Holdings, Inc.*, 282 P.3d 1069, 1076 (Wash. 2012) (en banc) (no liability for manufacturers of equipment "encased in asbestos insulating materials that the Navy applied to the equipment on its ships"). The remaining "overwhelming" support consists of a decision from Oregon's intermediate appellate court (the plaintiffs mislabel it an Oregon Supreme Court case) and several trial-level decisions, including unpublished, non-precedential decisions from common-pleas courts. Resps. Br. 41–42.

In addition to overstating their support, the plaintiffs ignore contrary state authority. They never disclose that Maine has adopted the petitioners' rule. *Grant v. Foster Wheeler, LLC*, 140 A.3d 1242, 1248–49 (Me. 2016) (cited in Petrs. Br. 29, 31). That opinion alone would make the division among state high courts two-to-one. And if lower-court decisions count, the split is further diluted. *See, e.g.*, *Thurmon v. Ga. Pac., LLC*, 650 F. App'x 752, 757, 761 (11th Cir. 2016) (applying Georgia law); *Morgan v. Bill Vann Co.*, 969 F. Supp. 2d 1358, 1367 (S.D. Ala. 2013) (Alabama law); *Faddish v. Buffalo Pumps*, 881 F. Supp. 2d 1361, 1369 (S.D. Fla. 2012) (Florida law); *Gilbert v.*

Advance Auto Parts, 2018 WL 3521971, at *13 (Pa. Super. Ct. July 23, 2018).

So the state courts (and courts applying state law) are, at most, closely divided. And in fact, the split is three-to-two *in favor of the petitioners*. The California and Washington Supreme Courts have held that manufacturers are not liable for later-added asbestos-containing parts and insulation. *O'Neil*, 266 P.3d at 995, 997–98; *Braaten*, 198 P.3d at 495–96. Both decisions are still good law. *Contra* Resps. Br. 44. The plaintiffs downplay these cases because they reserved the question whether the same rule would apply in "the case of a product that *required* the use of a defective part in order to operate." *O'Neil*, 266 P.3d at 996 n.6; *accord Braaten*, 198 P.3d at 495–96. But the courts left that issue undecided because it was not before them; they did not adopt an exception by declining to consider whether one existed. Indeed, *O'Neil* noted that, in cases involving "required" parts, "the policy rationales against imposing liability on a manufacturer for a defective part it did not produce or supply would remain." 266 P.3d at 996 n.6.

In sum, the split favors the petitioners, and would be far from "overwhelming" even if it didn't.

C. The plaintiffs' rule makes bad policy.

Tort law is motivated by retributive justice and economic efficiency. Promoting either requires fixing liability on the party to whom the plaintiff's injury is fairly attributable. In the products-liability context, that means placing liability on parties *within* the injurious product's chain of distribution, since there "is no reason to think a product manufacturer will be

able to exert any control over the safety of replacement parts or companion products made by other companies." *O'Neil*, 266 P.3d at 1007.

The asbestos context illustrates the idea. Between the petitioners' sale of equipment and any downstream injuries stood innumerable independent, third-party decisions over which the petitioners had no control. They could not stop third parties from making, selling, and distributing replacement parts; they could not stop the Navy and private shipbuilders from continuing to use asbestos, or from purchasing millions of shipboard components that they planned to insulate with asbestos; they could not force these parties to monitor scientific developments and act accordingly, or research and implement asbestos alternatives; they had no say in the training and safety equipment employees received before working with asbestos; and they played no role in the Navy's failure to provide John DeVries with tools for removing asbestos, which forced him to chip at it with a screwdriver. JA 320. This list could continue. All the way down, it would include independent decisions over which the petitioners had no control.

Given all this, it makes sense to impose liability on the parties who had the most control over the injury-causing product: those inside the product's chain of distribution, and those entities (like the Navy) that exposed their employees to asbestos despite knowing the risks. Lawyers successfully sued the first group into bankruptcy, but their clients can continue to collect through asbestos trusts. While recoveries from certain trusts might be small, *see* Br. of Veterans Orgs. 34, most claimants can recover from many different trusts, *see* RAND Corporation, *Asbestos Bank-*

ruptcy Trusts xv, 37 (2010), available at https://perma.cc/5HY2-H6DH. As for sailors injured because of the Navy's decision to use asbestos, there is a federal worker's compensation system for those injured by their service-time exposure to asbestos. Compensation is often lower than it would be in tort, but it is also far easier to obtain. *See* Amicus Br. of Richard A. Epstein 9.

The plaintiffs insist that the Third Circuit's test imposes liability *only* on those with sufficient control over later-added asbestos, because it limits liability to manufacturers who specify asbestos or make products that require its use. Resps. Br. 52. Again, this is a modified version of the Third Circuit's open-ended test. *Supra* 6–7. In any event, the modified test does not tighten the attenuated relationship between equipment manufacturers and asbestos-caused injuries that occur years or decades later—those injuries still require many independent decisions along the lines addressed above.

The plaintiffs insist that the maker of the durable good is better positioned to give a warning, because "the end user is more likely to interact with the durable product over an extended period of time." Resps. Br. 55 (citation omitted). The opposite is true. Those inside the chain of distribution can include a warning on the product's packaging, ensuring that *someone* gets the information—either the sophisticated employer, which can instruct its employees to take precautions, or the end users themselves. Those in the chain of distribution can also give scientifically up-to-date warnings. Makers and suppliers of durable goods cannot practically do the same. Even if they could, the maker of the dangerous good

is better positioned to learn its risks and share the information than the maker of a complementary good sold decades earlier.

The plaintiffs' argument that manufacturers "derive[] a benefit" from the sale of replacement parts proves too much. Resps. Br. 55. The maker of sushi knives derives a benefit from the sale of raw fish, and the car manufacturer derives a benefit from the sale of replacement tires. It does not follow that they can fairly and efficiently be responsible for warning about the risks of those complementary products.

Similarly unpersuasive is the plaintiffs' argument that the petitioners "and their insurers" would experience a "windfall" if not held liable, because the insurers collected premiums, the cost of which the petitioners passed on to consumers. Resps. Br. 15, 56. This argument assumes that the petitioners are liable. If they are not, the plaintiffs would receive a "windfall" if they could collect damages to which they are not entitled—including punitive damages, which one amicus concedes is part of what makes tort law so enticing to plaintiffs. Br. for Veterans Orgs. 37.

II. MARITIME-LAW PRINCIPLES DO NOT JUSTIFY A DEVIATION FROM COMMON-LAW DOCTRINE.

The common-law rule creates a bright line capable of predictable application. Predictability "enable[s] manufacturers easily to structure their business behavior," *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 870 (1986), and thus promotes maritime law's "fundamental interest" in "the protection of maritime commerce." *Norfolk S. Co. v. Kirby*, 543 U.S. 14, 25 (2004). A predictable rule also

creates uniformity in maritime law by ensuring that identical conduct is identically tortious on all the navigable waters. If uniformity means anything, it means that a warning is equally adequate in Puget Sound and Put-in-Bay. *Contra* Amicus Br. of Port Ministries Int'l 14 (arguing that maritime law's interest in uniformity requires only uniformity of test, not uniformity of application). On top of all this, the foregoing rule is easily applied, and thus accords with maritime law's preference for "simplicity and practicality." *Kermarec v. Compaignie Generale Transatlantique*, 358 U.S. 625, 631 (1959).

A. The plaintiffs rely entirely on the special solicitude owed to seamen.

The plaintiffs address none of these points. They assert that their rule is "simple," Resps. Br. 38, but they never respond to the petitioners' contrary arguments, Petrs. Br. 44–46, 49–51. The plaintiffs make no effort to defend the predictability of their approach, and thus never explain how it could advance maritime law's interest in uniformity. Nor do they seriously grapple with the inconsistency between their approach and the law's "fundamental interest" in maritime commerce. *Norfolk*, 543 U.S. at 25. They suggest in passing that more liability would ***help*** maritime commerce, by creating more joint tortfeasors from whom defendants might seek contribution. Resps. Br. 30–31. But if contribution for future liability is a concern, the parties can contract for it. In any event, maritime law has never embraced a maximize-the-tortfeasors approach. For example, shipbuilders are not liable for injuries caused by later-added asbestos, *see, e.g.*, *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1174 (9th Cir.

2016), even though the opposite rule would create yet another defendant from whom to seek contribution.

Plaintiffs' maritime-law argument focuses entirely on admiralty law's tradition of "special solicitude for the welfare of seamen and their families." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 36 (1990). The Third Circuit's approach, they say, accords with this special solicitude because it makes it easier for injured seamen to collect greater amounts.

This Court has never held that the concern for seamen's welfare overcomes all else. Indeed, this Court has expressly recognized that it may not "expand remedies at will simply because it might work to the benefit of seamen and those dependent upon them." *Miles*, 498 U.S. at 36. *Miles* applied this principle to deny a remedy under general maritime law more generous than that provided in an analogous statutory context. *Id.* The lesson is that the rules of general maritime law should not contradict the substantive law—including statutory law and common law—to which admiralty courts look for "guidance" in crafting such rules. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 420 (2009). If a rule contradicts those sources of guidance and the purposes of maritime-law generally, then its consistency with the special-solicitude principle is irrelevant. That is the case here: with the possible exception of the special-solicitude principle, every consideration to which courts look when discerning general maritime law cuts against the plaintiffs' rule.

None of this requires the Court to overrule or limit the special-solicitude principle. But the principle is outdated—not because the "seas are now safe," Resps. Br. 4, but because seamen are neither "friend-

less," *Ammar v. United States*, 342 F.3d 133, 146 (2d Cir. 2003), nor "deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults," *Robertson v. Baldwin*, 165 U.S. 275, 287 (1897). If nothing else, the principle's dubious foundations give another reason for denying it dispositive effect—an effect not even the plaintiffs argue it has.

B. The petitioners' position is fully consistent with this Court's maritime-law decisions.

The remainder of the plaintiffs' maritime-law discussion responds to arguments the petitioners never made. For example, they say the petitioners "ignore principles of *stare decisis* and ask this court to reject" the rule that ship owners owe a duty of "reasonable care under the circumstances of each case." Resps. Br. 28 (quoting *Kermarec*, 358 U.S. at 632). In fact, no one doubts that admiralty law, just like products-liability law in common-law courts, imposes a duty to exercise reasonable care. *See* 1 Owen & Davis on Prod. Liab. § 7:4 (4th ed. 2018). The dispute involves whether "reasonable care" requires warning about third-party products. Nothing in this Court's cases precludes it from explaining the meaning of "reasonable care" in this context. *Contra* Br. of Port Ministries 8–11. It is true that admiralty courts should not refine the concept of "reasonable care" in a way that complicates it. *Kermarec*, 358 U.S. at 631. But that *undermines* the plaintiff's approach, which draws "fine gradations" and "subtle distinctions," *id.*, like the difference between a "required" part and a non-required part. In contrast, a bright-line rule that *simplifies* the concept's application to a particu-

lar context well accords with the law's traditions of "simplicity and practicality." *Id.* at 631

The plaintiffs next say that the petitioners' argument "subverts this Court's holding in *East River* that machines are to be judged as an 'integrated package,' and not deconstructed to their 'component parts.'" Resps. Br. 29 (quoting *East River*, 476 U.S. at 867). Not so. First, later-added replacement parts and materials *are not* part of the "integrated product." *Supra* 3–9. Second, in its only case applying that portion of *East River*, this Court held that "equipment added to a product after the Manufacturer ... has sold the product to an Initial User is not part of the product" the manufacturer sold. *Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875, 884 (1997). *Saratoga and East River* both involved the economic-loss rule. Assuming they apply in this context too, they support the petitioners' rule.

Finally, one amicus suggests that the petitioners' rule would apply outside the products-liability context, effectively eliminating the negligence tort in various circumstances. This amicus says the petitioners' rule would bar an injured cruise-ship employee from suing "a cruise line [that] purchases and installs a defective piece of equipment on its cruise ship." Br. of Port Ministries 23. This ignores the question presented: "Can *products-liability* defendants"—parties that are sued for the alleged defects in products they made, sold, or distributed—"be held liable under maritime law for injuries caused by products that they did not make, sell, or distribute?" Pet. i (emphasis added). The answer will affect only products-liability claims.

III. THE THIRD CIRCUIT SHOULD BE REVERSED WITHOUT REGARD TO THE NAVY'S KNOWLEDGE.

This Court adopted the government-contractor defense in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988). Under that defense, state-law design-defect claims relating to military equipment are preempted if: (1) the equipment was made pursuant to "reasonably precise" specifications approved by the United States, and (2) the supplier warned the government about the "dangers in the use of the equipment that were known to the supplier but not to the United States." *Id.* at 512.

The plaintiffs say that "the government contractor defense is not before this Court," Resps. Br. 57, which is right. But they also accuse the petitioners of raising this defense through their references to the Navy's role in using asbestos, Resps. Br. 57, which is wrong. The petitioners' argument is that they are not liable because they did not make, sell, or distribute the asbestos alleged to have injured the decedents. Nothing turns on the Navy's role in the use of asbestos. To be sure, the petitioners have *discussed* the Navy's role, because "the facts here vividly show that liability should be limited to those inside the chain of distribution." Petrs. Br. 17, 52–53. But the petitioners win without regard to the Navy's conduct.

The plaintiffs also suggest that the question presented is unimportant because the petitioners might later avoid liability through the government-contractor defense. *See* Resps. Br. 57. That too is wrong. The government-contractor defense applies only in cases involving equipment supplied to the military, while the question presented arises in all

maritime-law cases. So whatever significance the government-contractor defense has in this case, it is irrelevant in many or even most cases in which question presented arises.

In addition, the government-contractor defense provides military contractors with little comfort as a practical matter. It can be resolved only after extensive discovery, often involving decades-old records and faded memories. This factbound affirmative defense is no substitute for a rule under which the claims against contractors fail as a matter of law.

CONCLUSION

The Court should reverse the Third Circuit, and remand with instructions to affirm the District Court's entries of summary judgment for the petitioners.

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Respectfully submitted,

Benjamin M. Flowers
JONES DAY
325 John H.
McConnell Blvd.,
Suite 600
Columbus, OH 43215

Christopher G. Conley
EVERT WEATHERSBY
HOUFF
200 Cleveland Road,
Suite 6
Bogart, GA 30622

Counsel for Petitioner CBS Corporation

Brady L. Green
WILBRAHAM, LAWLER &
BUBA
1818 Market Street,
Suite 3100
Philadelphia, PA
19103

Counsel for Petitioner Air & Liquid Systems Corp. (successor by merger to Buffalo Pumps, Inc.)

Shay Dvoretzky
Counsel of Record
Jeffrey R. Johnson
Vivek Suri
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Tel: (202) 879-3939
sdvoretzky@jonesday.com

John J. Hare
MARSHALL DENNEHEY
WARNER COLEMAN &
GOGGIN
2000 Market Street,
Suite 2300
Philadelphia, PA 19103

Counsel for Petitioner Ingersoll-Rand Company

Additional Counsel on Next Page

Christopher J. Keale
Afigo I. Okpewho-
Fadahunsi
TANENBAUM KEALE LLP
1085 Raymond Blvd.
One Newark Center
16th Floor
Newark, NJ 07102

Counsel for Petitioner
Foster Wheeler LLC

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